IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA, 1928

Crl.MC.No. 3641 of 2006()

PETITIONER: ACCUSED NOS.1,4,5,6 AND 7:

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1. SALI, S/O. DAMODARAN,
`KAILASAM HOUSE', POOLATHURA JUNCTION, WARD NO.1,
THRIKUNNAPUZHA PANCHAYATH.

2. MADHU, S/O. DIVAKARAN,
`MADHU BHAVAN,', WARD NO.6, THEKKEKARA PANCHAYATH,
MAVELIKARA.

3. VISWANATHAN, S/O. RAGHAVAN,
MULLIKULANGARA PONAKAM KUTTEZHATH VEETTIL,
WARD NO.4, THEKKEKARA PANCHAYATH, MAVELIKARA.

4. SADASIVAN, S/O. NARAYANAN,
VISHAKAM VEETTIL, WARD NO.9, BUDHANOOR PANCHAYATH,
CHERNGANOOR TALUK.

5. ABHILASH, S/O. PARAMESWARAN,
OLEDATH VEETTIL, WARD NO.17, NILAMBUR TALUK,
CHUNGATHARA VILLAGE, MALAPPURAM.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
SRI.SUNIL SHANKER

RESPONDENTS: COMPLAINANT:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. SUB INSPECTOR OF POLICE,
ALAPPUZH SOUTH POLICE STATION, ALAPPUZHA.

BY PUBLIC PROSECUTOR SRI. K.A. AKBAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3641 OF 2006

Dated this the 3rd day of January, 2007

ORDER

The petitioners face allegations under Secs.3 and 7 of the Essential Commodities Act read with Sec.5(a) of the Kerala Rationing Order. Cognizance has been taken by the learned Magistrate on the basis of a final report submitted by the police. The petitioners have entered appearance and have been enlarged on bail. The charge/plea has not been recorded so far. The petitioners have come to this Court with the prayer that the proceedings against them may be quashed invoking the powers under Sec.482 of the Cr.P.C.

2. I have perused the averments in the petition and the Annexures produced. I am certainly of opinion that the question must be considered by the learned Magistrate at the first instance under Sec.258 or Sec.239 of the Cr.P.C. The learned counsel for the petitioners submits that the offence alleged is only a summons offence and therefore it is only Sec.258 of the Cr.P.C. which would be applicable.

3. The petitioners shall be at liberty to raise their

contention before the learned Magistrate that the proceedings against them are not liable to be continued and seek an order dropping the proceedings under Sec.258 of the Cr.P.C. I find no reason for this Court at this stage where the accused have already entered appearance before the learned Magistrate to invoke the powers under Sec.482 of the Cr.P.C. Needless to say that the option of the petitioners to challenge the order passed under Sec.258 of the Cr.P.C., if necessary, shall remain.

4. With the above observations, this Crl.M.C. is dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge